

# **EXHIBIT 119**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

NIKE, INC.,

Plaintiff,

v.

STOCKX LLC,

Defendant.

Case No.: 1:22-CV-000983-VEC

**EXPERT REBUTTAL REPORT OF SARAH BUTLER**

## EXPERT REBUTTAL REPORT OF SARAH BUTLER

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## I. QUALIFICATIONS

1. I am a Senior Managing Director at NERA, where I am the Chair of the Survey and Sampling Practice and a member of the Intellectual Property, Product Liability, Antitrust, and Labor Practices. My business address is 4 Embarcadero Center, San Francisco, CA 94111. NERA is a firm providing expert statistical, survey, economic, and financial research analysis.

2. Among my responsibilities, I conduct survey research and market research and design and implement statistical samples for matters involving business and consumer decision-making, consumer choice, and consumer behavior. In the course of my career, I have conducted research for leading corporations and government agencies on consumers, employees, and businesses. My work has been included in numerous lawsuits involving issues related to trademark and trade dress confusion, secondary meaning, false advertising, and patent infringement, as well as in antitrust and employment-related litigations. I am a member of the American Association of Public Opinion Research, the American Statistical Association, the Intellectual Property Section of the American Bar Association, and the International Trademark Association (INTA).

3. I have also worked as a market researcher conducting surveys of consumers and professionals, focus groups, and in-depth interviews. I worked as an independent consultant conducting research for the Department of Environment and Rural Affairs in the United Kingdom. I have taught courses focused on or involving research methodologies in both the United States and Europe. I hold a Master's Degree from Trinity College, Dublin and another Master's Degree from Temple University.

4. I have substantial experience conducting and using surveys to measure consumer opinions and behaviors regarding products and services including purchase processes, product attributes, branding awareness and strength, new product research, and communications strategies.

During my career in academic and commercial research, I have personally facilitated a wide range of research including large-scale surveys, in-depth interviews, focus groups, and observational studies.

5. I have submitted expert reports, been deposed, and have testified at trial within the last five years. A list of my testimony is included on my current resume, which is attached as **Exhibit A**.

6. NERA is being compensated for my services in this matter at my standard rate of \$775 per hour. Members of the staff at NERA have worked at my direction to assist me in this engagement. No part of my compensation or NERA's compensation depends on the outcome of this litigation. Throughout this report, I have used the terms "I" and "my" to refer to work performed by me and/or others under my direction.

## II. DOCUMENTS REVIEWED

7. As part of my work, I reviewed the *First Amended Complaint* in this matter,<sup>1</sup> the Expert Report of John L. Hansen served on May 5, 2023,<sup>2</sup> the First Amended Expert Report of John L. Hansen served on May 30, 2023,<sup>3</sup> and other materials. A list of the specific materials I reviewed and relied upon can be found in **Exhibit B**.

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<sup>1</sup> First Amended Complaint, *NIKE, INC., v. STOCKX, LLC*, United States District Court for the Southern District of New York, Case No. 1:22-cv-000983-VEC, dated May 25, 2022 (hereinafter, "*Amended Complaint*").

<sup>2</sup> Expert Report of John L. Hansen, dated May 5, 2023 (hereinafter, "*Hansen Report*").

<sup>3</sup> First Amended Expert Report of John L. Hansen, dated May 30, 2023 (hereinafter, "*Am. Hansen Report*").

### III. ASSIGNMENT AND SUMMARY OF OPINIONS

8. I understand that Mr. Hansen, an expert for Nike, has asserted that revenue and/or profits from all trades of Nike and Jordan-branded sneakers on StockX's platform that involved at least one U.S. individual is attributable to the allegedly false representations made by StockX. As he asserts, "[a]ssuming that StockX's advertising claims about its authentication were false, and StockX authenticated and facilitated the sale of counterfeit Nike/Jordan-branded sneakers, my analysis indicates that StockX has benefitted by earning ill-gotten profits derived from falsely and/or misleadingly claiming that every 'Nike' and 'Jordan' brand good sold on its platform was '100% Authentic.'"<sup>4</sup>

9. To inform a response to Mr. Hansen's report,<sup>5</sup> I was asked by counsel for Defendant, StockX LLC (hereinafter "StockX"), to determine the extent to which, if at all, allegedly false statements related to the authentication and verification process (hereafter, "Authentication Statements")<sup>6,7</sup> found on StockX's website during the relevant time period influence consumers' decisions to use the site to purchase sneakers.

10. To evaluate the potential impact of the Authentication Statements on consumer behavior, I designed a survey. My survey compared the strength of purchase interest for consumers shown StockX's webpages containing the Authentication Statements (Test Group) to the purchase interest for consumers shown the same pages without the Authentication Statements (Control Group). My research design allows me to determine the degree to which, if at all, consumers are

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<sup>4</sup> *Hansen Report*, ¶ 14; *Am. Hansen Report*, ¶ 16.

<sup>5</sup> I understand that Robert Vigil is responding directly to Mr. Hansen's damages analysis.

<sup>6</sup> I understand from counsel that Nike has in discovery identified certain advertising claims that it claims were false. *See*, Nike Interrogatory Response #22. My survey tests all of those claims found on StockX's website, where products can be purchased. The specific Advertising Statements tested in my survey are outlined in detail in **Figure 11** below.

<sup>7</sup> I was instructed by counsel to rely on Nike's response to Interrogatory Response #22, which I understand from counsel is the lone Interrogatory response relevant to the identification of advertising claims Nike alleges to be false.

influenced by the Authentication Statements to purchase Nike sneakers through the StockX website, holding all other elements constant.<sup>8</sup> I surveyed a total of 409 respondents who have purchased a pair of sneakers on StockX's website since 2020<sup>9</sup> or would consider doing so in the next year. Based on these data, I conclude the following:

- The Authentication Statements do not influence respondents' purchase interest. A statistically equivalent number of respondents indicated that they are likely to purchase a pair of sneakers from StockX when the pages included statements related to "authentication" (Test Group) as compared to pages describing "inspection" (Control Group).
- When asked to explain their purchase interest, respondents provided a variety of reasons. Respondents referenced the organization and/or layout of the website, the variety of products offered, price, past experience with StockX, and perceived product quality.
- Respondents in the Control Group (shown pages *without* the Authentication Statements) were statistically as likely as those in the Test Group (shown pages *with* Authentication Statements) to indicate that they would purchase a pair of sneakers from StockX because the site was trustworthy or the products being sold were real. A total of 22.3 percent of respondents in the Test Group noted that the site was trustworthy, offered authentic products, or provided a guarantee. In the Control Group, a total of 20.7 percent

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<sup>8</sup> Holding all other elements constant in the Control Group allows me to account for other factors influencing respondents' answers such as the price of the goods shown, the variety of products offered or sources of survey "noise," such as demand effects, respondent inattention, or guessing.

<sup>9</sup> I understand from counsel that the agreed-upon relevant time period for discovery and potential damages in this action is January 1, 2020 through September 30, 2022.

of respondents noted that the site was trustworthy, offered authentic or “inspected” products, or provided a guarantee.<sup>10</sup>

11. The remainder of this report includes a brief summary of my understanding of this matter and provides a detailed description of my survey methodology and results.

## IV. BACKGROUND

12. Nike is a corporation organized under the laws of the State of Oregon with a principal place of business at One Bowerman Drive, Beaverton, Oregon 97005.<sup>11</sup> Nike is involved in the design, development, marketing, and selling of athletic footwear, apparel, equipment, accessories, and services.<sup>12</sup>

13. StockX LLC is an LLC organized under the law of the State of Michigan with its principal place of business located at 1046 Woodward Avenue, Detroit, Michigan 48226. StockX is an online marketplace that primarily facilitates third-party trading of sneakers, apparel, luxury handbags, electronics, and other collectibles sold on its website (<https://stockx.com>) and through its mobile application (StockX App).<sup>13</sup> However, I understand that every product sold on StockX is shipped from the seller to StockX where it undergoes a manual inspection, verification, and quality control process before being shipped to the buyer.<sup>14</sup> StockX verifies that the product is brand new and has never been worn and meets other standards established by StockX.<sup>15</sup>

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<sup>10</sup> The Control Group includes four respondents who referenced only “inspection” statements. If I remove these respondents, the rate is 18.7 percent.

<sup>11</sup> *Amended Complaint*, ¶ 16.

<sup>12</sup> *Amended Complaint*, ¶ 28.

<sup>13</sup> *Amended Complaint*, ¶¶ 3, 17-18, 48. I understand from counsel that, with very limited exceptions such as the Vault NFTs released in 2022, StockX does not, itself, engage in the sale of products but rather provides a platform for consumers to trade with each other.

<sup>14</sup> <https://www.nytimes.com/2018/07/06/business/smallbusiness/stockx-sneakerheads-luxury-goods.html>, last accessed June 1, 2023; <https://stockx.com/about/verification/>, last accessed June 1, 2023.

<sup>15</sup> <https://stockx.com/about/verification/>, last accessed June 1, 2023.



14. On May 25, 2022, Nike filed an *Amended Complaint* alleging, in part, that sneakers sold on StockX's platform were counterfeit.<sup>16</sup> Nike also asserted that StockX falsely advertises that it guarantees the products sold on its site are "100% Verified Authentic."<sup>17</sup> In addition to the "100% Verified Authentic" statement, Nike similarly claimed that statements such as: "Verified Authentic," "Guaranteed Authenticity," "StockX has a 99.96% authentication accuracy rate," and others are false and misleading.<sup>18</sup> Nike has further claimed that the Authentication Statements are material to consumers and asserts that these "claims are likely to influence consumer purchasing decisions."<sup>19</sup>

15. Nike subsequently submitted an expert report from John L. Hansen, who was retained to "assess disgorgement of StockX's profits related to the false advertising claims."<sup>20</sup> Mr. Hansen's report assumes that StockX's advertising claims about its authentication were false and directly harmed Nike,<sup>21</sup> and concludes that all revenues StockX earned from the sale of Nike or Jordan branded goods sold on its platform should therefore be subject to potential disgorgement in damages to Nike.<sup>22</sup> As part of his analysis, Mr. Hansen did not undertake any consumer perception study to assess whether or to what extent consumer purchasing decisions were affected by the allegedly false claims and, I understand from counsel, that no other Nike expert submitted such a study. Therefore, to evaluate what impact (if any) these Authentication Statements would have on

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<sup>16</sup> *Amended Complaint*, ¶¶ 12, 107.

<sup>17</sup> *Amended Complaint*, ¶ 172.

<sup>18</sup> Nike Interrogatory Response #22.

<sup>19</sup> *Amended Complaint*, ¶ 111.

<sup>20</sup> *Hansen Report*, ¶ 5; *Am. Hansen Report*, ¶ 7.

<sup>21</sup> *Hansen Report*, ¶¶ 48, 53; *Am. Hansen Report*, ¶¶ 50, 55.

<sup>22</sup> *Hansen Report*, ¶¶ 53-54, 60; *Am. Hansen Report*, ¶¶ 55-56, 62.

consumers' interest in purchasing sneakers on StockX's marketplace, I designed and conducted a survey.

## V. SURVEY METHODOLOGY

16. The design of my research follows the generally accepted principles for a survey used as evidence in litigation.<sup>23</sup> In general, the design of a reliable survey requires careful attention to the following key areas:

- The definition of the relevant population;
- The procedures for sampling from the relevant population;
- The survey questions used;
- The stimuli shown to respondents; and
- The protocol for calculating the results from the survey.<sup>24</sup>

17. The discussion of the survey I conducted is organized around each of these key areas.

### A. Survey Population

18. The relevant population for this matter is U.S. consumers, 18 years of age or older, who have purchased a pair of sneakers from StockX since 2020 or who are likely to do so in the next year.

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<sup>23</sup> Diamond, S. S. (2011). "Reference Guide on Survey Research," *Reference Manual on Scientific Evidence*, Committee on the Development of the Third Edition of the Reference Manual on Scientific Evidence; Federal Judicial Center; National Research Council (hereinafter, "*Diamond*"), pp. 359-423.

<sup>24</sup> The Federal Judicial Center's (2004) *Manual for Complex Litigation, Fourth Edition* §11.493, p. 103 phrases these key areas as:

- the population was properly chosen and defined;
- the sample chosen was representative of that population;
- the data gathered were accurately reported; and
- the data were analyzed in accordance with accepted statistical principles.

## B. Sampling of the Relevant Population

19. Potential survey respondents were contacted by Dynata, an online panel and data collection services company. Dynata complies with the standards for online survey data panels set forth by the Insights Association.<sup>25,26</sup> Dynata has a series of quality control measures to ensure it recruits high-quality participants for their studies; these include digital fingerprinting to prevent individual respondents from taking the survey multiple times, as well as verification procedures to ensure respondents are authentic.<sup>27</sup>

20. The data for my survey were collected between May 18, 2023 and May 26, 2023. Potential respondents were unaware of the purpose or topic of the survey and needed to meet the screening criteria outlined below to qualify for the survey. A total of 11,489 potential respondents began the survey and, of these, 409 qualified for and completed the survey.<sup>28</sup> The complete questionnaire is provided in **Exhibit D**, and screenshots of the survey as it appeared to respondents are included as **Exhibit E**.

## C. Quality Control Measures for the Survey

21. To ensure that my data are of the highest quality, I implemented quality control measures in addition to those undertaken by Dynata:

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<sup>25</sup> Additional information about Dynata is available on their website at <https://www.dynata.com/about-us/>, last accessed May 30, 2023.

<sup>26</sup> The Insights Association is an organization representing the industry and profession of market research and analytics (<https://www.insightsassociation.org/About-Us>, last accessed May 30, 2023).

<sup>27</sup> The verification procedures pertain to items such as the automated “bot” detection processes and entered state and zip code matching.

<sup>28</sup> The invitation for the survey is included in **Exhibit C**.

- a. As is standard survey practice for litigation, the survey was conducted in a “double-blind” fashion; that is, neither the staff at Dynata nor any of the respondents were aware of the survey sponsor or the ultimate intention of the survey.<sup>29</sup>
- b. Respondents were able to take the survey either on a desktop, laptop, or tablet computer, or on their mobile phone or cell phone. The survey program was tested separately on both a computer and mobile phone or cell phone in order to ensure that the survey questions appeared correctly on the different device types.
- c. Respondents had to correctly answer a Google reCAPTCHA question to ensure that a person, and not a computer or “bot,” was taking the survey.<sup>30</sup>
- d. Respondents had to indicate that they were at least 18 years of age, and that they currently live in the United States.
- e. Respondents were also required to enter their state of residence and zip code, and if these data conflicted with one another, the respondent was excluded.
- f. Respondents who indicated that they did not understand or were unwilling to adhere to the survey instructions were screened out of the survey.
- g. I also included an attention check question to ensure that respondents were reading each question carefully. Respondents who failed the attention check were screened out of the survey.
- h. At the end of the survey, I identified respondents who had previously completed a survey about sneakers or online shopping in the past month or who work for, or have a household member who works for, a market research or advertising

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<sup>29</sup> *Diamond*, pp. 410-411.

<sup>30</sup> “reCAPTCHA uses an advanced risk analysis engine and adaptive challenges to keep malicious software from engaging in abusive activities.” <https://www.google.com/recaptcha/about/>, last accessed May 30, 2023.

company, a company that makes or manufactures shoes, or an online retailer. Respondents were also identified if they indicated they did not know or were unsure to either question.<sup>31</sup>

- i. The survey was tested, and the initial results were reviewed to ensure that there were no errors in the programming and that respondents were able to understand and answer the questions as asked.

#### **D. Screening Questionnaire**

22. To ensure that respondents were part of the relevant population as defined for this matter, I asked a series of screening questions. Only respondents who met these qualifying conditions continued with the main survey. To qualify for the survey, respondents needed to currently reside in the United States and be 18 years old or older. Respondents also had to indicate that they have purchased a pair of sneakers from a third-party online marketplace (e.g., eBay or GOAT) since 2020, or are likely to do so within the next year. Respondents also had to specifically indicate that they had or would consider purchasing a pair of sneakers from stockx.com.

#### **E. Main Questionnaire**

23. In the main portion of the questionnaire, all qualified respondents were first provided with the following instructions across two screens:

Thank you for participating in today's survey. If you do not know or do not have an opinion about any of the questions, please select "Don't know / unsure." Please do not guess. Click ">" to proceed.

Please imagine you are shopping for a pair of sneakers. We are going to show you a series of webpages in this survey that you might encounter when shopping for sneakers. After reviewing the webpages, you will be asked some questions. Please note that there will be a delay on each page to ensure that the webpages load properly.

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<sup>31</sup> I also analyzed the data with and without these flagged respondents (n = 104) to ensure there was no impact. My conclusions do not change with the inclusion of these respondents (see **Exhibit H**).

24. Respondents were then randomly assigned to either the Test Group (shown a series of StockX.com webpages containing the Authentication Statements) or the Control Group (shown the same webpages, with all Authentication Statements removed or altered).<sup>32</sup>

25. Respondents were then shown five webpages: 1) the StockX homepage, 2) the StockX “How it Works” page, 3) the StockX “Process” page, 4) the StockX “Sneakers” page, and 5) the StockX “product description page” for Nike Dunk Low sneakers. The selected pages (1) represent the types of pages consumers might interact with when using StockX to purchase Nike sneakers (i.e., the home page, a list of products, and a specific product page), (2) include detailed information about StockX and how it works (which I understand to be relevant to the litigation), and, (3) include a version of every Authentication Statement that Nike has identified as allegedly false in their response to Interrogatory No. 22 that also appeared on the StockX website and app, where consumers can actually purchase shoes. Each webpage was presented on a separate screen, with the instruction, “Please select the “>” button at the bottom of the screen when you are ready to proceed.”<sup>33</sup>

26. After showing the five webpages, and confirming that they could see the pages clearly,<sup>34</sup> respondents were asked, based on the information they reviewed, how likely they would be to use the website to purchase a pair of sneakers. Respondents could select a number from a scale from 1-7 (with 1 = extremely unlikely and 7 = extremely likely) or indicate “Don’t know /

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<sup>32</sup> The survey stimuli are explained in more detail in **Section F** below.

<sup>33</sup> Respondents were required to view each webpage for at least ten seconds before being able to move to the next page of the survey.

<sup>34</sup> Respondents who indicated they could not see the webpages clearly were screened out.

unsure.”<sup>35</sup> All respondents who selected a number from the scale were then asked what makes them say that.<sup>36</sup> These questions are shown below:<sup>37</sup>

Q. Based on the information you reviewed, and using the scale below, how likely would you be to use this website to purchase a pair of sneakers?

Extremely unlikely			Neither likely nor unlikely			Extremely likely
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
1	2	3	4	5	6	7

1. Don't know / unsure

Q. What makes you say that your likelihood of using this website to purchase a pair of sneakers would be [**PIPE IN NUMBER**] on the 7-point scale (with 1 = Very unlikely and 7 = Extremely likely)? (*Please type in your response.*)<sup>38</sup>

27. After this series of questions, respondents were asked about past survey participation and were asked an industry screener question (described in paragraph 21). Respondents were also asked whether they were aware of any lawsuits involving StockX. Those who indicated “Yes” were asked to describe the lawsuit in their own words. After this, the survey was complete, and respondents were thanked for their time.

<sup>35</sup> The presentation of the scale was rotated to guard against order effects.

<sup>36</sup> Respondents who selected “Don't know / unsure” were not asked the follow-up question.

<sup>37</sup> Above both questions, respondents were provided with thumbnails for each webpage, with the instruction, “Please [tap / click] on a webpage to review it fully. When you are finished reviewing the webpage, [tap / click] anywhere on the screen to exit.”

<sup>38</sup> Respondents could type in a response or select a check box for “Don't know / unsure.”

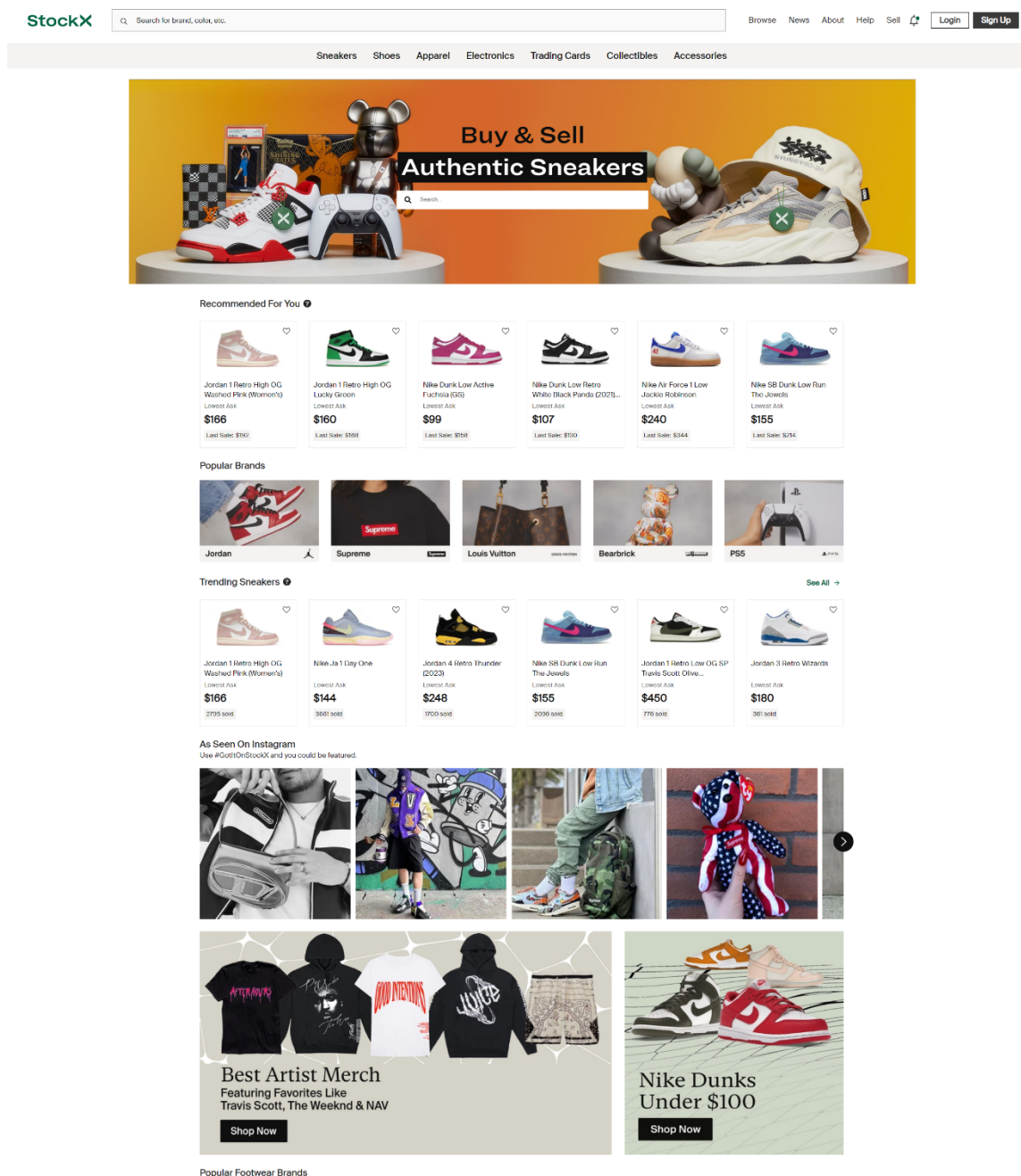
## F. Stimuli Shown

28. To determine whether the Authentication Statements on StockX's website would influence consumers' decision to use the site to purchase a pair of sneakers, I showed respondents webpages from StockX's website with statements about authentication.

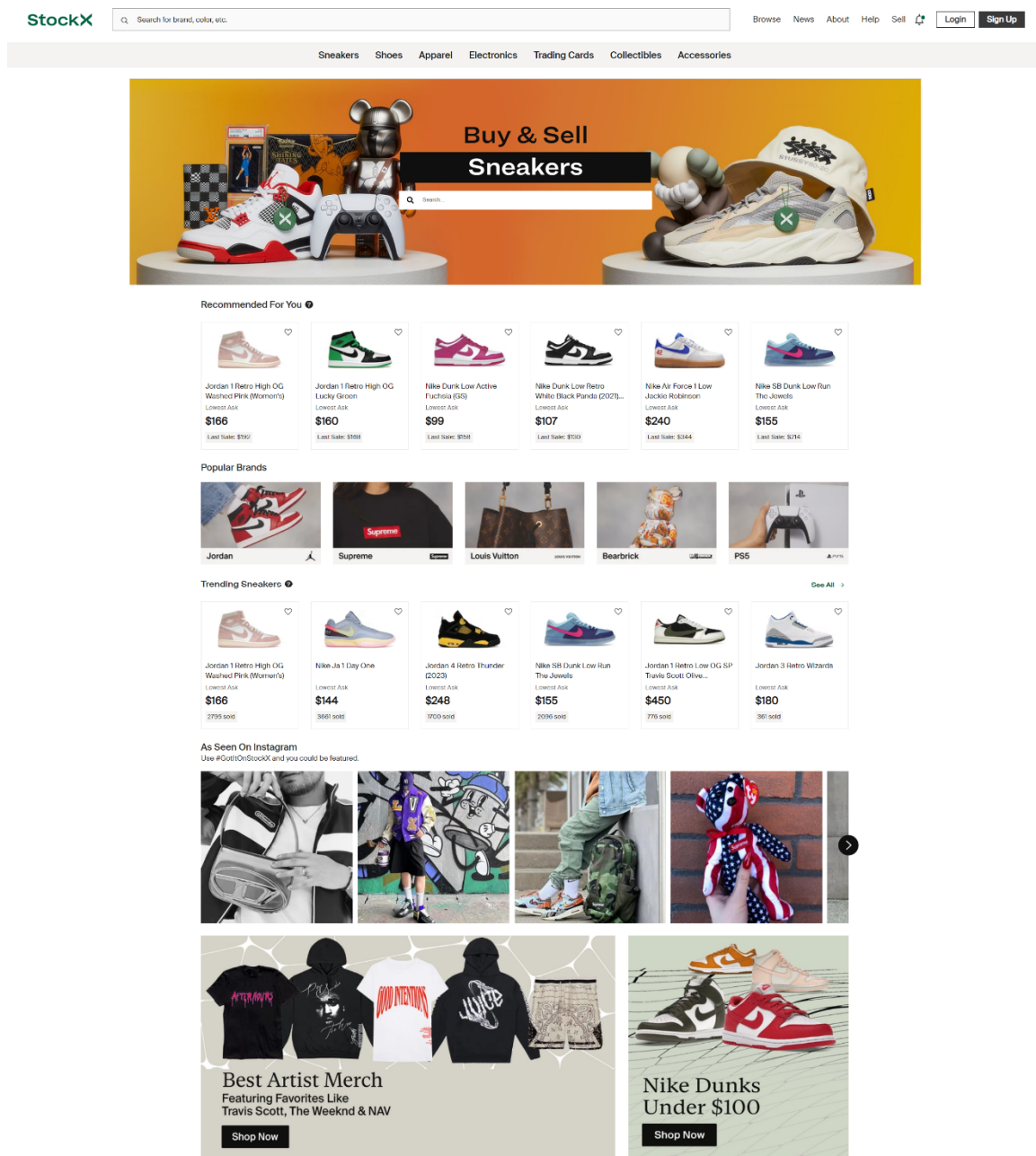
29. To understand what effect the Authentication Statements made by StockX would have on consumers' decision to use the site to purchase a pair of sneakers, I used a Test-Control experimental design. In this type of survey, respondents are randomly assigned to a Test Group (*i.e.*, those shown the StockX webpages with the Authentication Statements) or a Control Group (*i.e.*, those shown the same set of pages with the Authentication Statements removed or altered). Including a Control Group as part of the design allows me to determine what impact, if any, is specifically and solely attributable to Authentication Statements as the pages are exactly the same but for the statements. Therefore, the Control Group allows me to determine whether the Authentication Statements have an incremental impact on consumers' interest in using the site to purchase sneakers.

30. In the survey, respondents were first shown a historical version of the StockX homepage, bearing some of the Authentication Statements. Full webpages for all stimuli are included in **Exhibit F**. Respondents in the Test Group saw the page presented below in **Figure 1** while those in the Control Group saw the same page with the word "Authentic" removed from "Buy and Sell Authentic Sneakers" (see **Figure 2**).



Figure 1. StockX Homepage: Test Group<sup>39</sup>

<sup>39</sup> See, <https://web.archive.org/web/20210427125053/https://stockx.com/>, last accessed May 30, 2023 and <https://stockx.com/>, last accessed May 30, 2023.

**Figure 2. StockX Homepage: Control Group**

31. Next, I provided respondents with a historical version of the StockX “How It Works” webpage that contains some of the Authentication Statements. A portion of this webpage for Test Group respondents is shown below in **Figure 3** and for the Control Group in **Figure 4**.<sup>40</sup>


<sup>40</sup> Full webpages for all stimuli are included in **Exhibit F**.

Figure 3. StockX “How It Works” Webpage: Test Group<sup>41</sup>

**StockX** Browse News About Help Login Sign Up [Sell](#)

# The Current Culture Marketplace


Our mission is to provide access to the world's most coveted items in the smartest way possible. Buy and sell the hottest sneakers, apparel, electronics, collectibles, trading cards and accessories.



**Authentication** + + + + +

**Buyers** + + + + +


**Sellers** + + + + +



### 100% Verified Authentic


Every item sold goes through our proprietary multi-step verification process with our team of expert authenticators.

[Learn More](#) + + + + +




### Transparent Pricing

Our real-time marketplace works just like the stock market – allowing you to buy and sell the most coveted items at their true market price.




### Global Access

Whether it's pre-release, regionally limited, or “sold out” – our millions of customers from over 200+ countries allow you to easily secure those hard-to-find, coveted items.




### No BS

No chargebacks, no taking photos, no writing catchy descriptions, and no dealing with rogue buyers or sellers. We handle everything to make sure you can buy and sell with complete confidence.



### Secure

Preserving the integrity of our marketplace means staying a step ahead. Our security and fraud systems, powered by our world class partners, have your personal information covered 24/7.

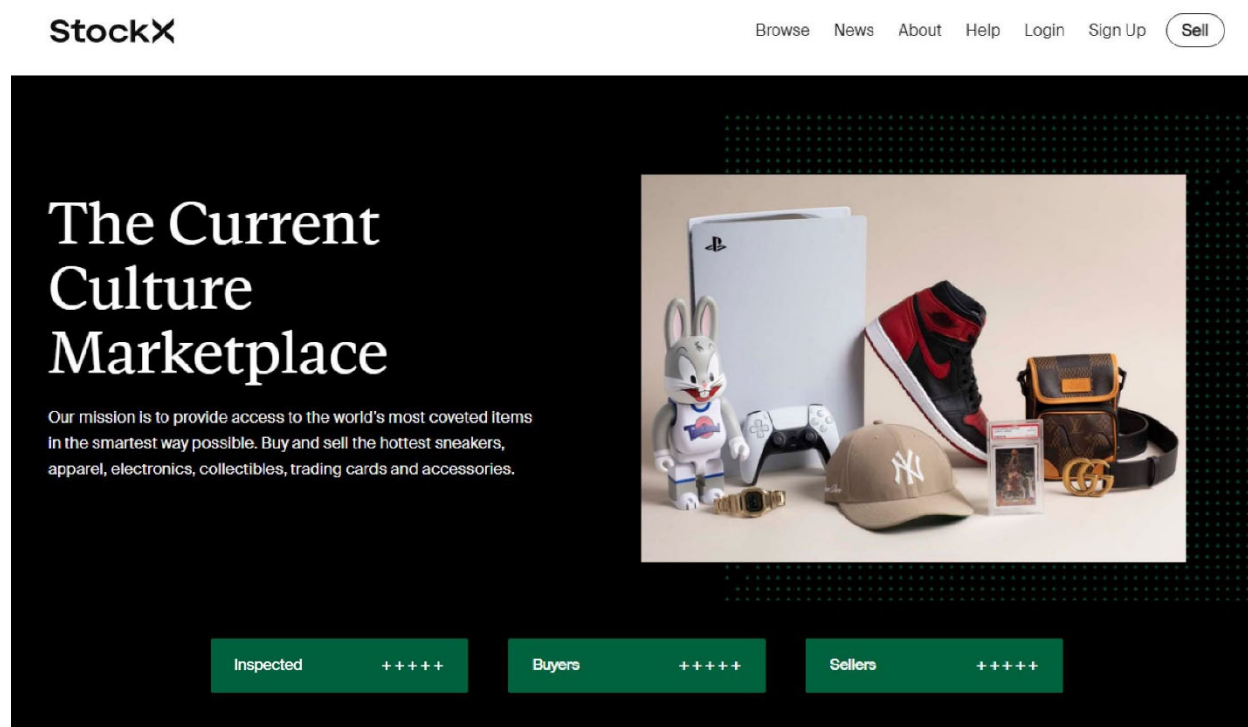


### Here For You

Thanks to our [Help Center](#), Chatbot, and dedicated global-support staff, you can be sure that we are always available to answer any and every question regarding our marketplace.

<sup>41</sup> NIKE0005790-95.

Figure 4. StockX “How It Works” Webpage: Control Group



### StockX Inspected

Every item sold goes through our proprietary inspection process with our team of inspectors.

[Learn More](#) +++++



### Transparent Pricing

Our real-time marketplace works just like the stock market – allowing you to buy and sell the most coveted items at their true market price.



### Global Access

Whether it's pre-release, regionally limited, or "sold out" – our millions of customers from over 200+ countries allow you to easily secure those hard-to-find, coveted items.



### No BS

No chargebacks, no taking photos, no writing catchy descriptions, and no dealing with rogue buyers or sellers. We handle everything to make sure you can buy and sell with complete confidence.



### Secure

Preserving the integrity of our marketplace means staying a step ahead. Our security and fraud systems, powered by our world class partners, have your personal information covered 24/7.



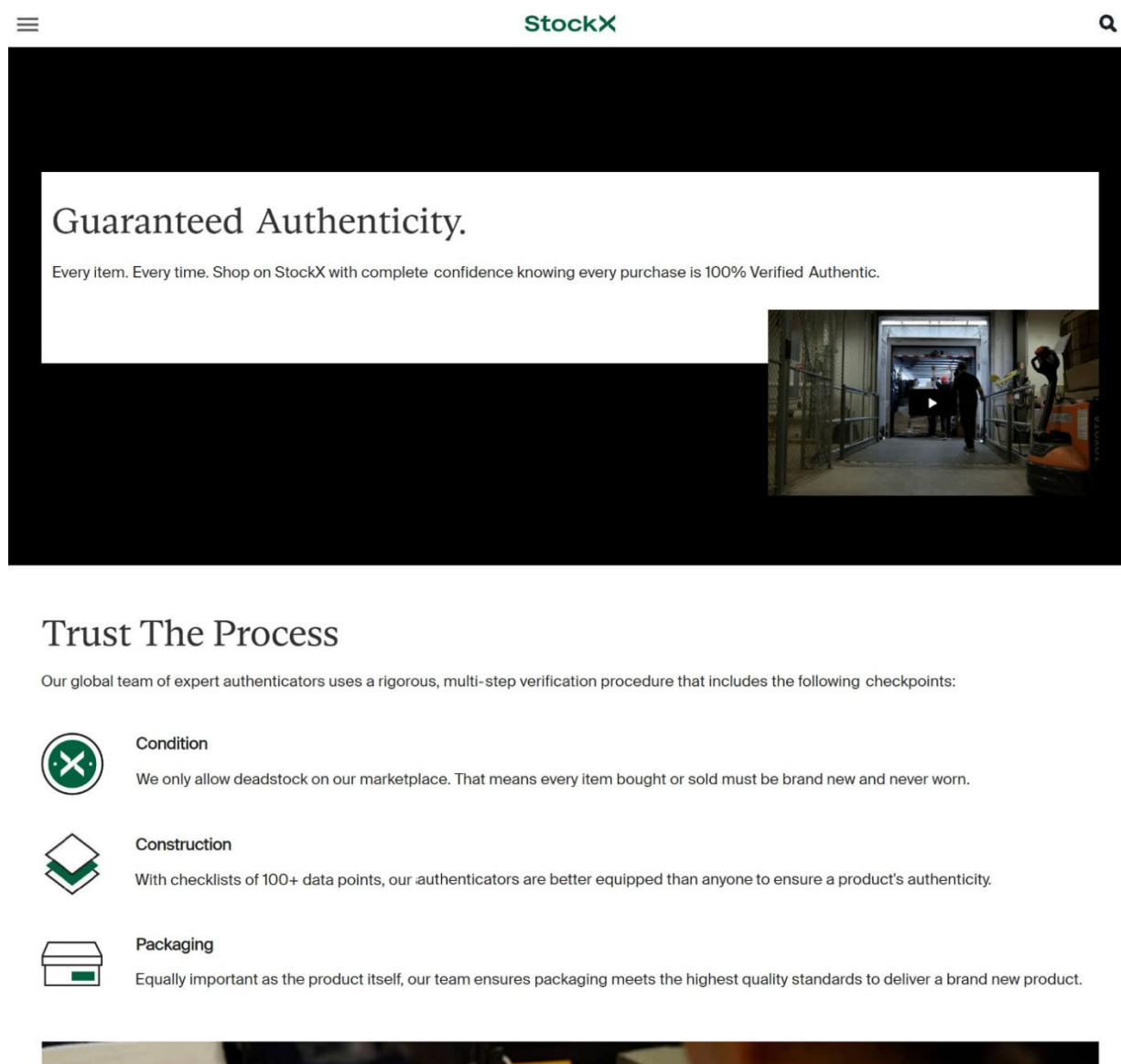
### Here For You

Thanks to our [Help Center](#), Chatbot, and dedicated global-support staff, you can be sure that we are always available to answer any and every question regarding our marketplace.



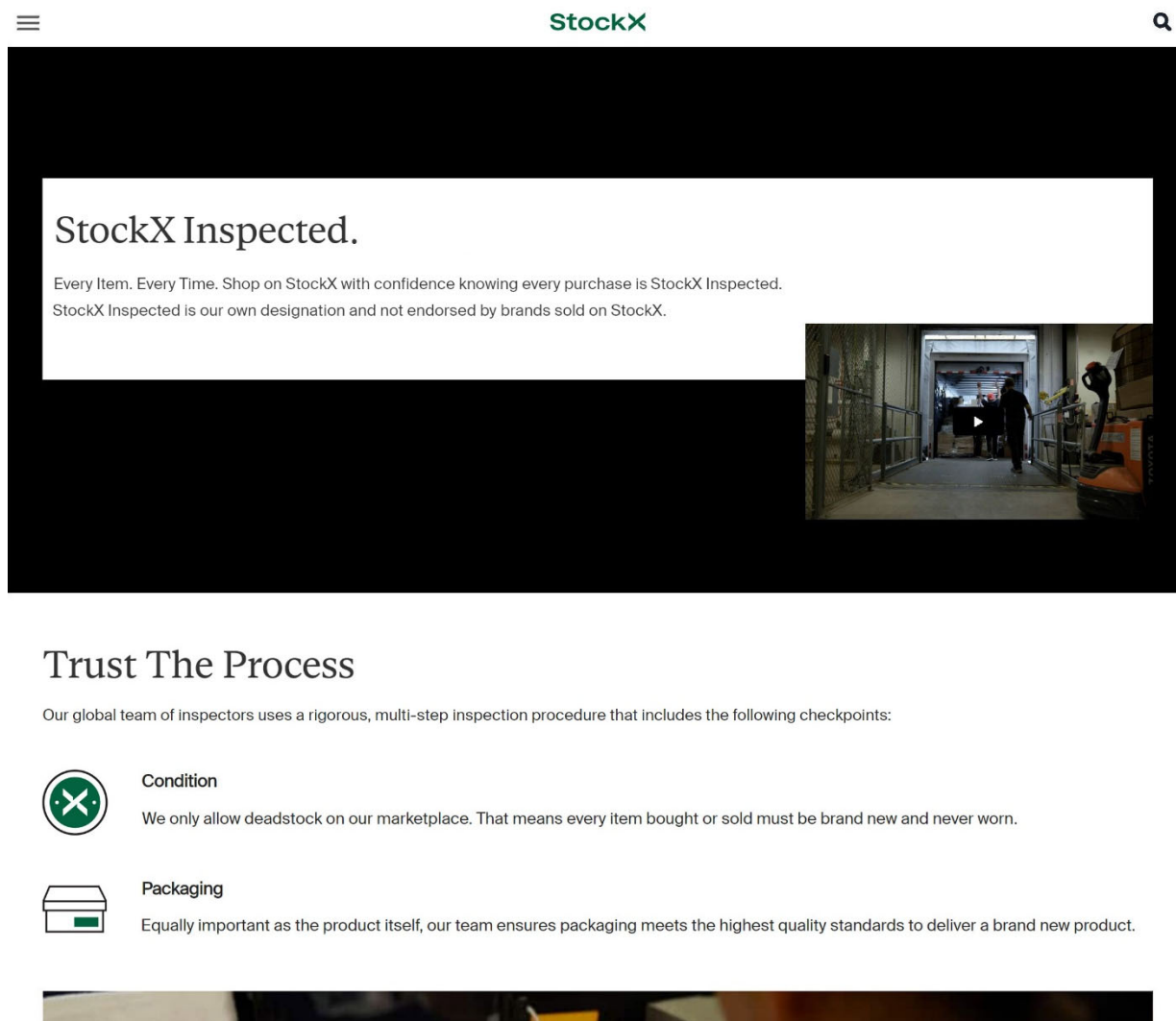
32. Next, I provided respondents with a historical version of the StockX “Process” webpage explaining the process by which StockX reviews products before a sale can be completed, including claims about “Guaranteed Authenticity” and other Authentication Statements. A portion of this webpage for Test Group respondents is shown below in **Figure 5**. A portion of the webpage shown to Control Group respondents is shown in **Figure 6**.

**Figure 5. StockX “Process” Webpage: Test Group<sup>42</sup>**

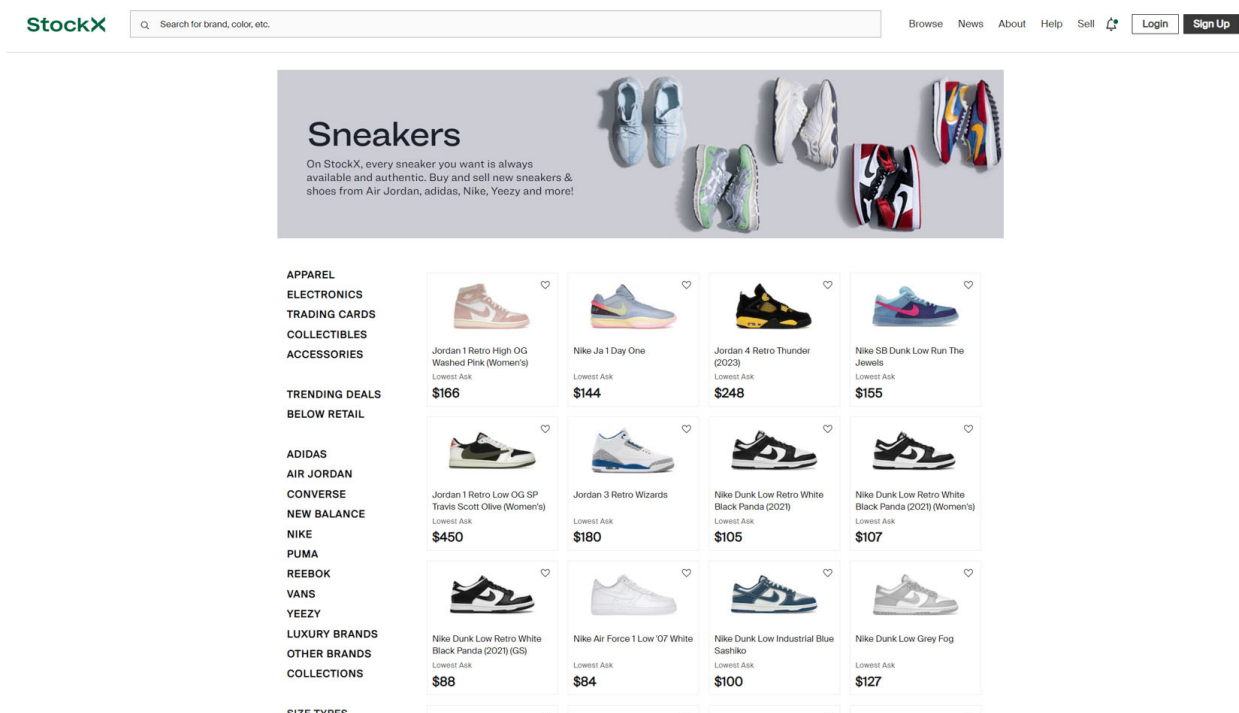


<sup>42</sup> NIKE0000281-87.

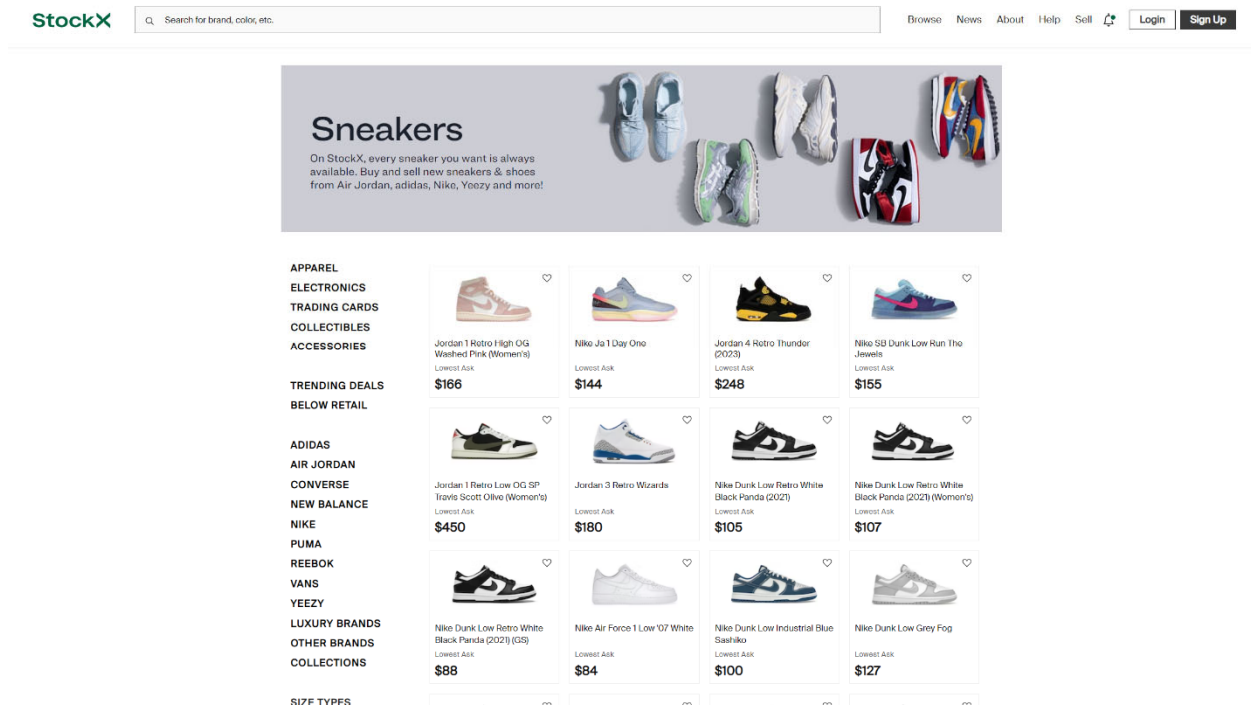
Figure 6. StockX “Process” Webpage: Control Group



33. Next, I provided respondents with a historical version of the “Sneakers” webpage showing sneakers listed for sale and containing Authentication Statements. A portion of this webpage for Test Group respondents is shown below in **Figure 7** and the webpage shown to Control Group respondents is shown in **Figure 8**.

Figure 7. StockX “Sneakers” Webpage: Test Group<sup>43</sup>

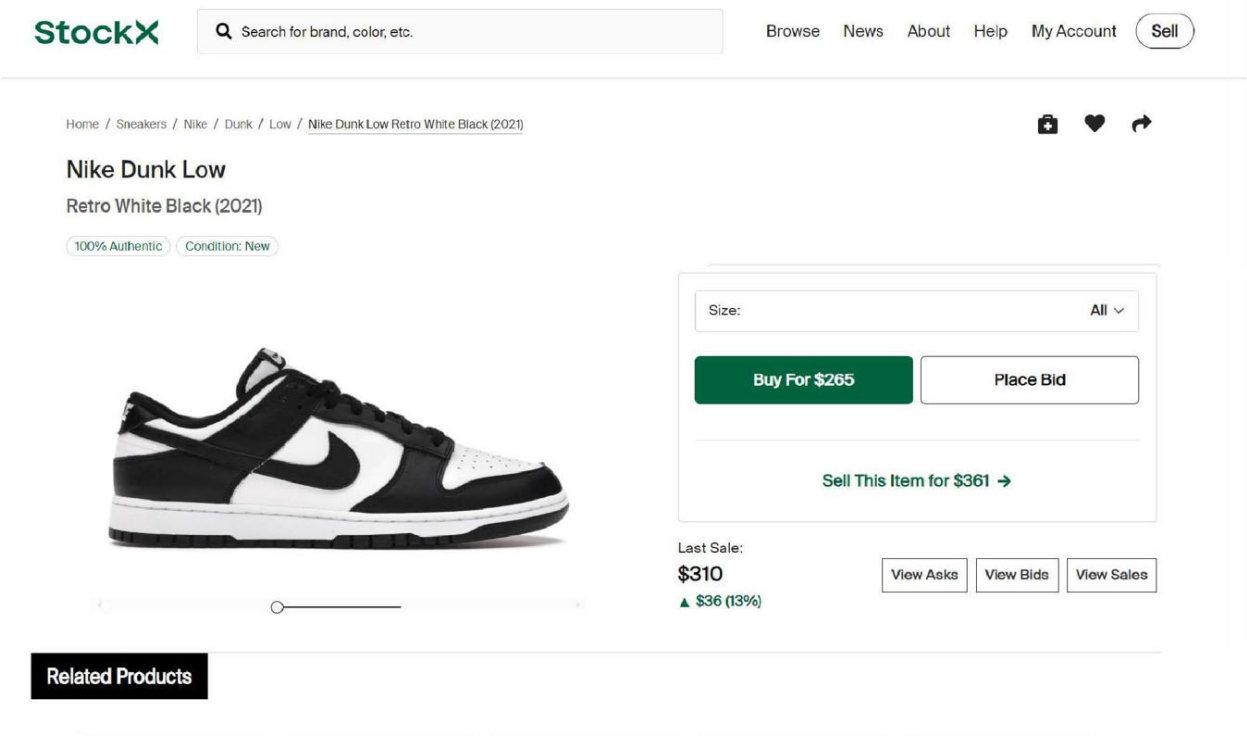
<sup>43</sup> See, <https://web.archive.org/web/20220207163648/https://stockx.com/sneakers>, last accessed May 30, 2023 and <https://stockx.com/sneakers>, last accessed May 30, 2023.

**Figure 8. StockX “Sneakers” Webpage: Control Group**

34. Last, I provided respondents with a historical version of the product description webpage for one of the Nike sneakers featured on the “sneakers” webpage – the Nike Dunk Low Retro Black White – which contains Authentication Statements that Nike has alleged to be false and misleading. A portion of this webpage for Test Group respondents is shown below in **Figure 9** and the webpage shown to Control Group respondents is shown in **Figure 10**.

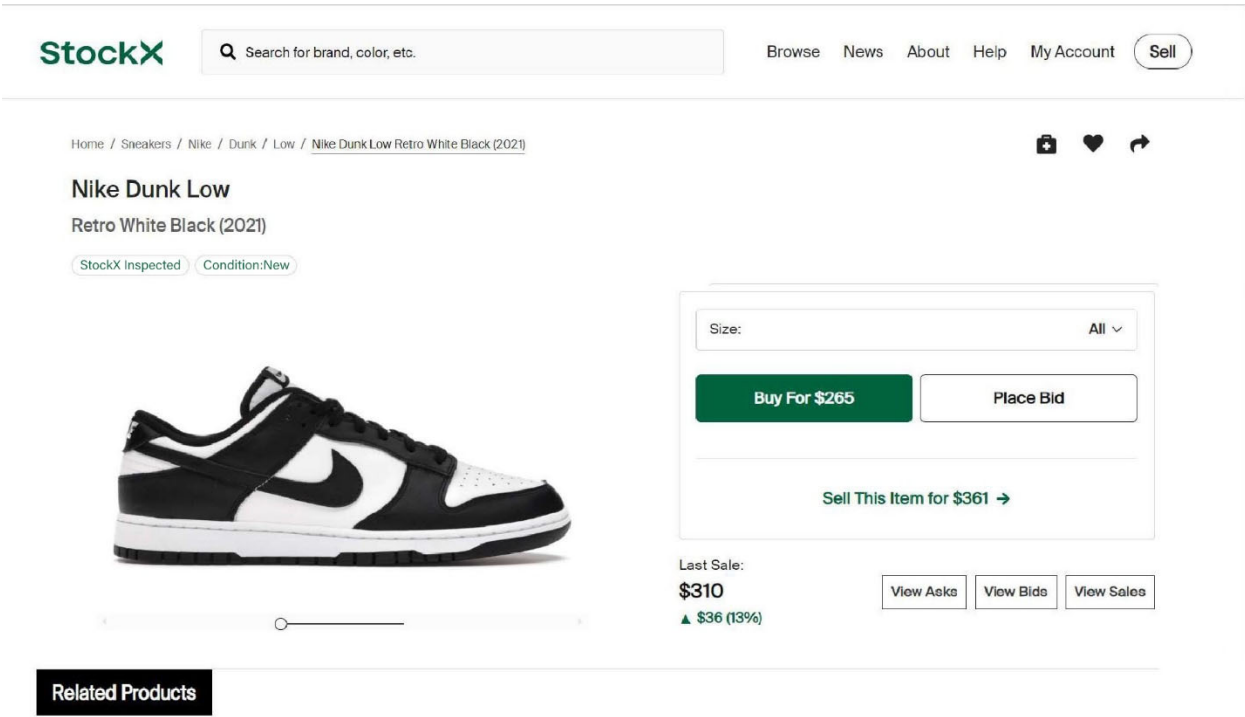


Figure 9. Nike Dunk Low “Product Description” Webpage: Test Group<sup>44</sup>



<sup>44</sup> NIKE0000016-17.

Figure 10. Nike Dunk Low “Product Description” Webpage: Control Group



35. As shown below in **Figure 11**, I made a series of changes to each of the Control pages to remove or alter the Authentication Statements.

Figure 11. Stimuli Modifications

	Test Group	Control Group
<b>StockX Homepage</b>	“Buy and Sell Authentic Sneakers”	“Buy and Sell Sneakers”
<b>How it Works Webpage</b>	Green “Authentication” box “100% Verified Authentic”  “Every item sold goes through our proprietary multi-step verification process with our team of expert authenticators.”  “We Authenticate”  “We Authenticate & You Get Paid”	Green “Inspected” Box “StockX Inspected”  “Every item sold goes through our proprietary inspection process with our team of inspectors.”  “We Inspect”  “We Inspect & You Get Paid”

<b>StockX “Process” Webpage</b>	<b>“Guaranteed Verification”</b>	<b>“StockX Inspected”</b>
	<p>“Every Item. Every Time. Shop on StockX with confidence knowing every purchase is 100% Verified Authentic.”</p>	<p>“Every Item. Every Time. Shop on StockX with confidence knowing every purchase is StockX Inspected. StockX Inspected is our own designation and not endorsed by brands sold on StockX.”</p>
	<p>“Our global team of expert authenticators...”</p>	<p>“Our global team of inspectors...”</p>
	<p>“Construction With checklists of 100+ datapoints, our authenticators are better equipped than anyone to ensure a product’s authenticity.”</p>	<p>Entire statement was removed.</p>
	<p>“A final check in our authentication practice...”</p>	<p>“A final check in our inspection process...”</p>
	<p>“Authenticators” or “Authenticator”</p>	<p>“Inspectors” or “Inspector”</p>
	<p>“In a community filled with inauthentic items...”</p>	<p>“In a community filled with uninspected items...”</p>
	<p>“I have the privilege of teaching a new generation of authenticators...”</p>	<p>“I have the privilege of teaching a new generation of inspectors...”</p>
	<p>“Over the years, our team members have authenticated...”</p>	<p>“Over the years, our team members have inspected...”</p>
	<p>Green “chips” reading “Verified Authentic”</p>	<p>Green chips were blurred so no text was visible.</p>
	<p>“Our authenticators share a deep love”</p>	<p>“Our inspectors share a deep love”</p>
	<p>“Verifying the Air Jordan” Video</p>	<p>“Inspecting the Air Jordan” Video</p>
	<p>“Details Verified Authentic”</p>	<p>“StockX Inspected”</p>

	<p>“StockX defines “Deadstock” as an authentic, new, unworn pair of sneakers.”</p> <p>“How does the Verification process work?”</p> <p>“Once a product arrives to StockX from the seller, our dedicated verification team begins...”</p>	<p>“StockX defines “Deadstock” as a new, unworn pair of sneakers.”</p> <p>“How does the Inspection process work?”</p> <p>“Once a product arrives to StockX from the seller, our dedicated inspection team begins...”</p>
<b>Sneakers Webpage</b>	<p>“On StockX, every sneaker you want is always available and authentic. Buy and sell new sneakers &amp; shoes from Air Jordan, adidas, Nike, Yeezy and more!”</p>	<p>“On StockX, every sneaker you want is always available. Buy and sell new sneakers &amp; shoes from Air Jordan, adidas, Nike, Yeezy and more!”</p>
<b>Nike Dunk Low “Product Description” Webpage</b>	<p>“100% Authentic”</p>	<p>“StockX Inspected”</p>

## VI. SURVEY RESULTS

36. I surveyed a total of 409 respondents.<sup>45</sup> The age and Census region of respondents' residences are shown below in **Table 1** and **Table 2**. As shown below, survey respondents were a mix of ages, resided across the four U.S. Census regions, and included both men and women.

**Table 1. Age and Gender of Respondents**

<b>Age Group</b>	<b>Male</b>		<b>Female</b>		<b>Overall</b>	
	<b>Count</b>	<b>Percent</b>	<b>Count</b>	<b>Percent</b>	<b>Count</b>	<b>Percent</b>
18-34	140	34.2%	93	22.7%	235	57.5%
35-54	111	27.1%	55	13.4%	167	40.8%
55+	4	1.0%	3	0.7%	7	1.7%
<b>Total Respondents</b>	<b>255</b>	<b>62.3%</b>	<b>151</b>	<b>36.9%</b>	<b>409</b>	<b>100.0%</b>

Note: Two respondents in age group 18-34 and one respondent in age group 35-54 indicated "non-binary" when asked their gender.

Source: NERA Shoe Survey, May 2023.

**Table 2. Respondents' Census Region**

<b>Response</b>	<b>Count</b>	<b>Percent</b>
Northeast	75	18.3%
Midwest	75	18.3%
South	189	46.2%
West	70	17.1%
<b>Total Respondents</b>	<b>409</b>	<b>100.0%</b>

Source: NERA Shoe Survey, May 2023.

37. All respondents had to have purchased or indicate that they would consider purchasing sneakers from StockX to qualify for the survey.<sup>46</sup> These consumers have also used or would consider purchasing from a number of other third-party sites including eBay, GOAT,

<sup>45</sup> Final data can be found in **Exhibit G**.

<sup>46</sup> Based on open-ended responses, at least 58 respondents specifically indicated that they have purchased sneakers using StockX in the past.

Poshmark, and Flight Club.<sup>47</sup> A small number of respondents indicated that they have or would consider purchasing from a fake site, thegrid.com.<sup>48</sup> On average, respondents indicated that they have or would consider purchasing from five of the listed third-party online marketplace websites. These results are shown below in **Table 3**.

**Table 3. Third-Party Online Marketplace Websites Respondents Have / Would Purchase Sneakers From**

<b>Response</b>	<b>Count</b>	<b>Percent<sup>1</sup></b>
stockx.com	409	100.0%
eBay.com	312	76.3%
goat.com	245	59.9%
poshmark.com	187	45.7%
flightclub.com	185	45.2%
realreal.com	114	27.9%
thredup.com	112	27.4%
depop.com	98	24.0%
farfetch.com	98	24.0%
grailed.com	80	19.6%
ssense.com	72	17.6%
thegrid.com	56	13.7%
Other	10	2.4%
None of these	0	0.0%
Don't know / unsure	0	0.0%
<b>Total Respondents</b>	<b>409</b>	

*S12. Of the following third-party online marketplace websites [which, if any, did you purchase a pair of sneakers from since 2020] [you are aware of, which, if any, would you consider purchasing a pair of sneakers from] [you are aware of, which, if any, did you purchase a pair of sneakers from since 2020 and/or would you consider purchasing a pair of sneakers from]?*

Note: <sup>1</sup> Percentages do not add to 100 because respondents could select multiple responses.

Source: NERA Shoe Survey, May 2023.

<sup>47</sup> I understand many of these third-party online marketplace websites also use statements related to authentication. For example, flightclub.com notes under their “General Inquiries” page that all of their inventory is “guaranteed authentic” (See, STX0805880) and goat.com states that they offer an “Assurance of Authenticity” (See, STX0805899). Websites like eBay also include authentication services, where listings receive a blue checkmark next to the words “Authenticity Guarantee” (See, STX0805895).

<sup>48</sup> To assess whether I should remove these respondents from my final sample, I analyzed the data with and without those who indicated that they had or would consider purchasing sneakers from “thegrid.com.” When I exclude these respondents, the average purchase interest of the Test Group is no different than the average purchase interest of the Control Group. Because including these respondents does not affect my conclusions, I retain all respondents in my final sample. Results without these respondents can be found in **Exhibit H**.

38. The vast majority of consumers who have purchased sneakers from a third-party site in the past would do so again in the future. A total of 317 of respondents (77.5 percent) surveyed indicated that they have purchased sneakers in the past from a third-party site and would do so in the future, 15.9 percent would consider purchasing in the future (but have not done so in the past),<sup>49</sup> and a small number (6.6 amount) have only purchased in the past.<sup>50</sup>

39. After being shown the Test or Control stimuli, respondents reported their likelihood of using this website to purchase a pair of sneakers. These results are shown below. Results omitting respondents who reported being aware of a lawsuit involving StockX are presented in **Exhibit H**.<sup>51</sup> As shown in **Table 4**, respondents in both groups report being very likely to use the StockX website to purchase sneakers. In the Test Group, 95.1 percent of respondents reported a 5, 6, or 7 on the scale with 1 = Extremely Unlikely and 7 = Extremely Likely. In the Control Group, 94.6 percent reported a 5, 6, or 7. When I compare the average purchase interest of the Test Group to that of the Control Group, I find there is no statistically significant difference.<sup>52</sup> In other words, the removal or alteration of the Authentication Statements has no discernable impact on consumers' interest in using the StockX website to purchase sneakers.

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<sup>49</sup> Results for respondents who did not previously purchase from StockX or any other third-party site are included in **Exhibit H**.

<sup>50</sup> I evaluated whether the small number of those who had purchased in the past but would not do so in next year were more likely to be those aware of a lawsuit against StockX. Of the total 27 respondents who have purchased sneakers using a third-party site since 2020 but would not do so in the next year, only six of them were aware of a lawsuit related to StockX. This suggests that the reason these past purchasers do not intend to purchase from a third-party site such as StockX in the future is not the result of knowledge about the lawsuit.

<sup>51</sup> Results remained consistent even amongst those who indicated they knew about a lawsuit with StockX.

<sup>52</sup> On average, respondents in the Test Group reported an equally high likelihood of purchase ( $M = 6.20$ ,  $SE = .08$ ) compared to Control Group respondents ( $M = 6.31$ ,  $SE = .07$ ),  $t(407) = 1.97$ ,  $p = .33$ .

**Table 4: Respondents' Likelihood of Using Website to Purchase Sneakers**

<b>Response</b>	<b>Test</b>		<b>Control</b>	
	<b>Count</b>	<b>Percent</b>	<b>Count</b>	<b>Percent</b>
1: Extremely unlikely	2	1.0%	1	0.5%
2	2	1.0%	1	0.5%
3	3	1.5%	2	1.0%
4: Neither likely nor unlikely	3	1.5%	7	3.4%
5	26	12.6%	23	11.3%
6	69	33.5%	55	27.1%
7: Extremely likely	101	49.0%	114	56.2%
Don't know / unsure	0	0.0%	0	0.0%
<b>Total Respondents</b>	<b>206</b>	<b>100.0%</b>	<b>203</b>	<b>100.0%</b>

*Q2. Based on the information you reviewed, and using the scale below, how likely would you be to use this website to purchase a pair of sneakers?*

Source: Source: NERA Shoe Survey, May 2023.

40. In response to an open-ended question asking why they would be likely (or unlikely) to use the StockX website to purchase a pair of sneakers, respondents provided a range of answers. Many appreciated the organization and/or layout of the website, the variety or price of products, or noted their past positive experience with StockX. For example:

- Respondent 657533960 was “Extremely Likely” to purchase shoes from the StockX website because “I have used StockX in the past and had a good experience. They also have a very wide variety of sneakers and apparel that I am interested in.”;
- Respondent 656735986 was “Extremely Likely” to purchase shoes from the StockX website because “This website looks really cool.”;
- Another respondent (656740412) was likely to purchase shoes on the StockX website because they “liked the interface of the website it was easy to look for information and really well-organized also it seems really user-friendly. Also, I liked how easily I can buy and sell a product here.”; and



- Respondent 656948375 was likely to use the website because “Being able to bid means i might get a better price.”

41. In the Test Group, 22.3 percent of respondents<sup>53</sup> indicated that their interest in using the site was, in part, due to authentication, guarantees, or trusting the site. The rates were similar in the Control Group, in which 20.7 percent of respondents<sup>54</sup> indicated that their interest in using the site was, in part, due to authentication, guarantees, inspections, or trusting the site.<sup>55,56</sup> The similarity in the results in the open-ended responses confirm the findings from the purchase interest question; the Authentication Statements do not have a meaningful impact on respondents’ interest in using StockX’s site to purchase sneakers.

42. When considering only those respondents who reported being likely to purchase a pair of sneakers from a third-party online marketplace like StockX in the next year, but who had not previously purchased products from StockX or a site like it since 2020 (meaning they may not have been exposed to StockX’s Authentication Statements in the past), only 21.2 percent of respondents in the Test Group mentioned authentication, guarantees, or trusting the site. The rates

<sup>53</sup> See Respondents 657106554, 656719492, 656741303, 656745890, 656946722, 656965004, 656971534, 656985565, 657025206, 657025299, 657031850, 657042467, 657058868, 657072058, 657108132, 657121974, 657445880, 657487506, 657514033, 657516952, 657522430, 657523003, 657687853, 657700715, 657711246, 657863860, 658033156, 658033969, 658050177, 658055566, 658094506, 658122593, 658278563, 657024554, 657443224, 657492933, 657498441, 657696480, 657857326, 658054284, 657027207, 657163504, 657526487, 657650205, 658032018, and 658111795.

<sup>54</sup> See Respondents 656886891, 656964494, 656964952, 656994350, 657023309, 657023741, 657040798, 657048514, 657051099, 657060821, 657063358, 657081138, 657093626, 657121059, 657134581, 657463700, 657491843, 657496138, 657499557, 657523559, 657535921, 657666413, 657842687, 657863694, 658023653, 658049071, 658054137, 658057477, 658094325, 658247553, 658249215, 657076244, 657095129, 657503511, 658270393, 657497083, 656969531, 656939007, 657025243, 657032071, 657551366, and 657032569.

<sup>55</sup> Some number of respondents in both the Test and the Control Groups appear to simply be referencing the process of reviewing, or evaluating, the shoes (and use the language of “authenticate” or “inspect” in this manner). I have included all such references in the tabulations above (*i.e.*, 22.3 percent in the Test Group and 20.7 percent in the Control Group). Removing the small number of respondents in the Control Group who only referenced “inspection” statements (Respondents 657081138, 657491843, 657666413, and 656969531), results in a total of 18.7 percent of Control Group respondents who indicated that their interest in purchasing sneakers from the site was due, in part, to authentication, guarantees, or trusting the site.

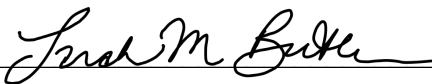
<sup>56</sup> Of the 196 Test Group respondents likely (5, 6, or 7) to use the site, 46 (23.5 percent) mentioned authentication, guarantees, or trusting the site, compared to 21.9 percent (42/192) in the Control Group who mentioned authentication/inspection, guarantees, or trusting the site. This is a net difference of 1.6 percent. Similar analyses for respondent subgroups are included in **Exhibit H**.

were again similar in the Control Group, where 18.8 percent of respondents mentioned authentication, guarantees, inspection, or trusting the site. The net difference is 2.5 percent.

## VII. CONCLUSIONS

43. I conducted a survey of 409 consumers who have purchased a pair of sneakers on StockX.com since 2020 or who are likely to do so in the next year. The results from my survey establish that the allegedly false Authentication Statements do not have a material impact on consumers' likelihood of using the website to purchase a pair of sneakers. A statistically equivalent number of respondents indicated that they are likely to use StockX to purchase sneakers when its webpages included Authentication Statements as compared to the number who would purchase when shown the same pages without the Authentication Statements (*i.e.*, those shown webpages with the statements removed or replaced by "inspected").

44. My conclusions have been reached through the proper application of survey methods and using standard methodologies relied upon by experts in the field of survey and market and consumer research. My opinions will continue to be informed by any additional material that becomes available to me. I reserve the right to update and or supplement my opinions if I am provided with additional information. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.



Sarah Butler, Managing Director  
June 2, 2023